IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6967 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ATIC INDUSTRIES LIMITED

Versus

COLLECTOR

Appearance:

MR M.R.BHATT for Petitioner

MS HARSHA DEVANI, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 04/10/2002

ORAL JUDGEMENT

1. This petition is filed by the petitioner for the issuance of writ of mandamus or any other writ, directing the respondents to grant to the petitioner exemption from payment of electricity duty for a period of 15 years from

11.10.1983 i.e. commencement of the Bombay Electricity Duty (Gujarat Amendment Act) 1983. It is further prayed to declare that under the amended provisions of the Bombay Electricity Duty (Gujarat Amendment) Act, 1983, the petitioner is entitled to exemption from payment of electricity duty for a period of 15 years from 11.10.1983 i.e. the date of commencement of the Act.

2. The dispute arose in the following backdrop :

The petitioner is a public limited company at Atul, District - Valsad. In its establishment, the petitioner installed 1 Number 2000 KW Back Pressure Turbo Generating Set and 2 Nos. 500 KVA Diesel Generating Sets. In pursuance of the provisions of the Bombay Electricity Duty Act, 1958, the petitioner, vide application dated 28.7.1979, requested for exemption from the payment of electricity duty, for a period of 10 years. The provision applicable at that time and as stood then was Section - 3 Clause (vii) and sub-clause (a) & (b) of the said Act which is reproduced as under :

3(vii) for motive power and lighting in respect of premises used by an industrial undertaking for industrial purpose, until the expiry of the following period, that is to say :-

(a) in the case of an industrial undertaking which generates energy for its own use, ten years from the date of the commencement of the Bombay Electricity Duty (Gujarat Second Amendment) Act, 1961 (hereinafter referred to as "the commencement date" or the date of starting the generation of such energy, whichever is later;

(b) in the case of a new industrial undertaking established on or after 1st May, 1960, which does not generate energy for its own use, five years from the commencement date or the date on which the industrial undertaking commences for the first time manufacture or production of goods, whichever is later.

Provided that no industrial undertaking shall be entitled to exemption from payment of electricity duty under this clause, unless it has obtained a certificate regarding eligibility for such exemption in prescribed form by making an application therefor in prescribed form and within prescribed period to such officer as the State Government may, by notification in the

Official Gazette, specify.

3. It appears that after obtaining necessary clarification as per the provisions of the said Act, Collector granted exemption Certificate dated 22.7.1981 w.e.f. 30.7.1979 to 31.8.1987. Again, after the expiry of the said date i.e. 31.8.1987, under Certificate dated 9.2.1988, the Collector granted further exemption from 26.11.1987 to 25.11.1989, that is to say that except for the intervening period from 1.9.1987 to 15. 11.1987, the petitioner was granted exemption from electricity duty from 30.7.1979 to 25.11.1989 in accordance with above referred provision of the above Act. It appears that thereafter the Collector issued Notice to the petitioner to show cause as to why the said exemption should not be withdrawn. The petitioner filed one Spl. Civil Application No. 4275/88 against the above said show cause notice and as per the statement made at Bar, this Court ruled that the petitioner was entitled to the said exemption of 10 years.

4. Thereafter, the provision of the Bombay Electricity Duty Act, 1958 appears to have been amended w.e.f. 11th October, 1983. The provision under which, as noted above, the petitioner was granted exemption, was undergone a change and amended as reproduced below :

3. Duty on units energy consumed: (1) [Subject to the provisions of sub-section (2), (2A), (2AA) and (3), there shall be levied and paid to the State Government a duty on the consumption of electricity (hereinafter in this Act referred to as "electricity duty") at the rates specified below :

(a) the electricity duty shall be payable by consumers other than those referred to in sub-clauses (i) and (ii) of clause (a) of section 2, at the rates specified in Schedule 1 to this Act, and

(b) the electricity duty shall be payable by consumers referred to in sub-clause (i) and (ii) of clause (a) of section 2, at the rates specified in Schedule II to this Act.]

(2) Electricity duty shall not be leviable on the units of energy consumed.

(i) by the Government of Gujarat (save in

respect of premises used for residential purposes);

(i-a) by or in respect of any municipal corporation, municipality, local board, notified area committee, cantonment board or panchayat constituted under any law for the time being in force in the State for the purpose of, or in respect of, public street lighting, public water works (including headworks and other auxiliary water supply works and pumps used for the purpose), public gardens including zoos, public museums or system of public sewers or drains;

(ii) by a consumer in respect of premises used for residential purposes in a rural area, if the total energy, consumed by him for the said purpose in a year does not exceed 250 units;

(iii) in respect of a hospital or dispensary which is not maintained for private gain (save in respect of premises used for residential purposes);

(iv) where the energy is generated by person for the purpose of supplying it for the use of vehicles or vessels;

(v) where the energy is generated at a voltage not exceeding 100 volts;

(v-a) where the energy is generated by any person by solar wind or biomass energy;

(vi) [save as provided in clause (vii), in respect of] such industrial or agricultural purposes in such cases and subject to such terms and conditions and for such period as the State Government may, having regard to the need and conditions of industrial and agricultural development in the areas by general or special order specify in that behalf.

(vii) for motive power and lighting in respect premises used by an industrial undertaking for industrial purpose, until the expiry of the following period, that

is to say :-

(a) in the case of an industrial undertaking which generates energy either singly or jointly with any other industrial undertaking for its own use or as the case may be, for the use of industrial undertakings which are jointly generating the energy,

(i) fifteen years from the date of commencement of the Bombay Electricity Duty (Gujarat Second Amendment) Act, 1983 (Guj. 17 of 1983) (hereinafter in this sub-section and sub-sections (2A) and (2AA) referred to as "the commencement date" or the date of starting the generation of such energy, whichever is later if such generation of energy is by, back pressure turbine or if such generation of energy is obtained by cogeneration;

(ii) ten years from the commencement date or the date of starting the generation of such energy whichever is later if such generation of energy is based on any other process;

(b) in the case of a new industrial undertaking established on or after the commencement date, which does not generate energy or its own use, five years from the commencement date or the date on which the industrial undertaking commences for the first time manufacture or production of goods whichever is later.

Provided that no industrial undertaking shall be entitled to exemption from payment of electricity duty under this clause, unless it has obtained a certificate regarding eligibility for such exemption in prescribed form by making an application therefor in prescribed form and within prescribed period to such officer as the State Government may, by notification in the Official Gazette, specify.

4. We are concerned with above provisions i.e. Section 3 ss (2) Cl. (vii) sub-cl. (a) & (b) in this

petition. In this petition the petitioner has prayed for granting of above said relief on the ground that under Clause (vii) (i) of sub-section (2) of Section 3, as amended in 1983, exemption for 15 years is available to the petitioner from the date of the commencement of the amended Act or from the date of starting the generation of such energy whichever is later if such generation of energy is by back pressure turbine or if such generation of energy is obtained by cogeneration.

5. The sole question, therefore, arises for consideration is whether the petitioner is entitled to benefit under Sec.3 sub-section (2) clause (vii) sub-clause (i) of the Bombay Electricity Act, 1958 as amended in 1983 i.e. from 10th October, 1983, which is the date of commencement of the said Amendment, in spite of the exemption of duty for 10 years which the petitioner was granted and availed of under the provision of the said Act before the provision was amended in 1983.

6. Learned Advocate Mr.M.R.Bhatt for the petitioner and learned AGP Ms. Harshad Devani for the respondents were heard at length. Learned Advocate Mr. Bhatt for the petitioner stressed on the phraseology used by the Legislature in the provision of Section -3 as amended in 1983. It was contended that, admittedly, the first time the Legislature included the use of electricity generated by back pressure turbine engine in 1983. It was urged that the specific provision for the exemption of 15 years is made for the use of back pressure turbine engine because the device is more beneficial and salutary to keep pollution level. It was urged that in the amended provision of 1983, the exemption was to be granted to the industrial undertaking which generates energy by a back pressure turbine for 15 years.

(1) from the date of commencement of the Electricity Duty Act, 1983, or

(2) from the date of or starting the generation of such energy

This 15 years, according to learned advocate, are to be reckoned, either from the commencement of the amended provision or from the date of starting of generation of such energy by back pressure turbine engine, and the 15 years to be reckoned with reference to the phraseology "whichever is later" denoting that if the energy is generated by back pressure turbine after the commencement of the Act, then, exemption could be granted for 15 years from the date of starting of such energy, but if the energy is generated by back pressure turbine

before the commencement of amended provision in 1983, then the 15 years would be from the date of the commencement of the amended provision. Relying on this provision of Section-3 sub-sec. (2) Clause (vii) sub-clause (a)(i) as amended in 1983, it is argued that the petitioner at least is entitled to exemption from the electricity duty by virtue of this beneficial provision of 15 years from the date of the commencement of the amended provision 1983. It was argued that the insertion of phrase "whichever is later" by the Legislature, clearly indicates that the Legislature intended to include back pressure turbine or if such generation of energy which started even before the commencement of Bombay Electricity Duty (Gujarat Amendment Act),1983. It was urged that by letter dated 19.11.1983, the Collector was requested to grant such exemption for 10 years under the provision of the Amending Act, 1983, while vide letter dated 13.6.1988, the Collector rejected the request on the ground that the petitioner has started generating energy before the commencement of 1983 Act. It was also contended that the exemption period which was granted by the unamended provision was in force when 1983 amendment came into force. Since under the old provision, the petitioner was granted exemption till 15.11.1987 and the provisions were amended in 1983. Learned Advocate for the petitioner relied upon certain decisions of Supreme Court under the Income Tax Act, to support the view that the provision of exemption be liberally construed. Those decisions are (i) Parshottam Nagindas and Others vs. B.R. Adwalpalkar, reported in (1996) 218 I.T.R. 392, and (ii) Commissioner of Income Tax vs. Shan Finance (P) Ltd., reported in (1998) 231 I.T.R. 308.

7. As against this, learned AGP for the respondents placed reliance on Sec. 3 sub-section (2AA) of the Bombay Electricity Act, 1958, which was inserted by way of amendment in the Act of 1983. It is pertinent to refer to and reproduce these provisions, on which the learned AGP has placed reliance, which are as under :

3(2AA) (a) Nothing contained in this Act as amended by the Bombay Electricity Duty (Gujarat Amendment) Act, 1983 (Guj. 17 of 1983) (hereinafter referred to as "the Amending Act") shall affect any exemption granted to an existing industrial undertaking before the commencement date and such exemption shall continue for the period provided in clause (vii) of sub-section (2), as the case may be, sub-section (2A) before the commencement date.

(b) Notwithstanding anything contained in clause (vii) or sub-section(2) or sub-section (2A) as amended by the Amending Act, any existing industrial undertaking which was eligible for exemption under the provisions of clause (vii) of sub-section (2) or sub-section (2A) before the commencement date but which did not avail of such exemption before the commencement date shall be eligible for such exemption under the said clause (vii) or the said sub-section (2A) as if the Amending Act was not passed.

Explanation - For the purpose of this sub-section an existing industrial undertaking means an industrial undertaking which exists on the commencement date and which manufactures or produces goods for sale or use in the manufacture or production of other goods but does not include an undertaking which manufactures or produces any kind of food and drinks meant ordinarily for consumption on the premises of the undertaking."

It is, therefore, contended that once the exemption is granted to the petitioner, the petitioner is not entitled to double benefit because vide provision in the shape of sub-sec (2AA) the exemption granted under the old provisions are saved and vide sub-clause (b) which is non-obstinate clause the entitlement of an undertaking to enjoy exemption is also saved. It was urged that since this express provision has been inserted in the Amending Act, the intention of the Legislature is clear that the benefit of Section 3 sub-sec.(2) clause (vii) sub-clause (i)(a) would not be available to the petitioner for the simple reason that undertaking of the petitioner was not established on the date of the commencement of the Amending Act, 1983 nor started generating the energy thereafter. It was argued that if the provisions of Section- 3 sub-sec. (2) Clause (vii) sub-clause (i)(a) be given that meaning, as contended on behalf of the petitioner, then, the provisions of Sec. 3 sub-sec. (2AA) would be rendered redundant and nugatory, and that cannot be the intention of he Legislature. It was urged that the Act came to be amended again in 1999. If the interpretation which the petitioner has advanced is attached to the provision under which the exemption is sought for, then the petitioner would be entitled to exemption under 1999 Amendment also, and which is not the purpose and object of the Act nor intended by the Legislature. Learned AGP relied upon certain decisions of the Apex Court to support the contention that the

provisions granting exemption must be construed strictly and according to the Legislative intent.

8. Having heard rival contentions and having gone through the entire records including the affidavit-in-reply filed on behalf of the respondents, as aforesaid, the point which requires to be decided as to whether the petitioner is entitled to further exemption of 15 years as contended.

9. The provisions which are applicable to the point raised are noted above. Before 1983 Amended Act, the exemption from the electricity duty was granted as per the Bombay Electricity Duty Act, 1958 on certain terms and conditions for 10 years, though there was no classification about the mode of generating the energy. Admittedly, petitioner availed the exemption of 10 years from the electricity duty under the provision as the same stood then before the provisions were amended in 1983. Now petitioner further claims exemption of 15 years as abovesaid.

10. The Amendment was made in 1983 in Section 3 of the Bombay Electricity Duty Act, 1958 as aforesaid. Interpreting the provision of Clause (vii) of Section 3, it was contended that though the petitioner has availed the exemption of 10 years by virtue of the amended provision, now petitioner is entitled to further exemption of 15 years from the commencement of the Amending Act because the petitioner generates energy by back pressure turbine engine.

11. Before the examination of the provisions as noted above, the object and the reasons of the Act itself will be material to look into for ascertaining the Legislative intent. Needless, it is to say that, the exemption from the electricity duty to new establishment was envisaged because the same would encourage the new industrial units and industrial units shall develop the industrial capacity to produce more goods in the national interest. Pertinent to note that, and therefore, the Legislatures in their wisdom fixed the period for the exemption meaning thereby to promote the new establishments. The conceivable purpose behind making such legislation presumably would be to attract capital investment in the new establishments. If the financial help by way of exemption is granted to new industries, then such industries may get financial help so as to grow day-by-day. The purpose also appears that the new commercial establishments will have to compete with similar entrepreneurs whose feet by the progress of time,

might be deepened in the business and new commercial establishments might find it difficult to compete with such progressive developed entrepreneurs. The purpose therefore of the Legislature is clear to the extent that the exemption in electricity duty should be granted to new establishments which starts industry with self-generating energy for certain years and, therefore, right from the enacting of the statute to the 1999 Amendment, the provisions are made for the applicability of the exemptions from the date of commencement and restricted to certain time limit. This explains the scheme of the Act which is evident that the exemption is to be granted for once and for certain period only. This exemption period necessary is assessed and fixed by the Legislators having regard to overall financial as well as other conditions prevalent at that time at the national scenario. For example, firstly, the period for exemption fixed was 5 years by Amendment in 60's, it was made 10 years. By Amendment in 1983 the period was assessed at 15 years. This exercise leads to conclusion that Legislature intended to grant exemption to self power generating units from duty for once only and that for certain period. If we further examine the scheme of the Act granting exemption for certain period and review the length of period as per prevalent situation, then we must ascribe the intention to the Legislature that exemption was to be granted for once and not for ever. Had the Legislature intended to grant further exemption to the class of industries, who have already availed of exemption, then, the Legislature would have made express provision in this regard. This is clearly ascertainable from the scheme of the Act, as aforesaid. Not only that, this view is more supportable by the fact that the Legislature thought it expedient to legislate provisions like Section 3 sub-section (2AA). It is clear that in sub-section (2AA) sub-clause (a) the exemption granted by the earlier provisions is saved and made continued for the period provided in the old unamended provision. The clause (b) of the said sub-section is further clear that right of exemption arising from unamended provision and if not availed, then the same could be availed ignoring the provision as amended in 1983 and as provided in unamended provision before 1983. The language used in sub-clause (b) of sub-section (2AA) of Section 3 makes it abundantly clear that in what terms the exemption would be available. Here also we must note that after these provisions, there is deliberate omission of provisions for the undertakings which have already availed the exemption. This denotes the intention of Legislature. By introducing Amendment in 1983, it is made clear that exemption would be available to the class of persons as

envisaged by Section 3 sub-section (2) Clause (vii) subclause (a) & (i). Over and above by provision of sub-section (2AA) sub-clause (a) & (b), it is made clear that the exemption granted earlier shall be saved. Not only that if such exemption is not availed then, the same can be availed, notwithstanding, the Amendment made in 1983 by Amending Act. Meaning thereby clearly that the Legislatures have specified classes of persons to whom and on what terms the exemption would be available. Reading Section 3 sub-section (2) clause (vii) sub-clause (a)(i) and sub-section (2AA) of Section 3, it is clear that the provisions are exhaustive and all category of exemptions are included in this provision.

12. In these circumstances, with reference to the object and reasons of the Act generally if the scheme of the Act is examined, then, it is abundantly clear that had the Legislature intended to give the benefit of exemption to the class which already availed of exemption under the old provision, then, the Legislature must have incorporated express provision in this respect, and absence of such provision, must lead to the interpretation that by way of Amendment in 1983, the class which already availed the exemption are not included. In clause (vii) of Section 3 sub-section (2), the language used "from the date of the commencement" or "the date of starting the generation of energy" and thereafter "whichever is later", only mean that, if the establishment is started on the date of the commencement of 1982 Amending Act, the exemption will be 15 years reckoning from the date of the commencement, and if the establishment itself produces energy thereafter, then the 15 years to be reckoned from the date of starting of the self producing energy, and phraseology "whichever is later" is used with that reference only and no other meaning can be attributed to this language.

13. If the interpretation as contended on behalf of the petitioner is upheld, the same would lead to violate the constitutional mandate in respect of discrimination. The petitioner in this case had already availed the exemption of 10 years. When the 1983 Amending Act came into force, the petitioner had already availed of 4 years of the exemption and claimed 15 more years of exemption under the provisions of the Amending Act, 1983. If the same is granted, then the total exemption would be 20 years to the petitioner. It would be discriminatory to the classes which would be covered by Clause (vii) of Section 3 sub-section (2) which would get the exemption of 15 years and not more than that. Therefore it stands to reason that under the Bombay Electricity Duty Act, the

exemption which is envisaged is in respect of new establishment or an establishment who starts the production through self created energy. This exemption is limited as per the scheme for certain period only. This provision must be strictly construed because exemption is an exception to general rule for certain purposes, as noted above. In this view of the matter, when once, the petitioner is granted exemption under the Act, he cannot claim further exemption by way of or in pursuance of the provision Amended in 1983 Act. The granting of further exemption as said above would not only defeat the very purpose of the Act but would be in violation of constitutional mandate of indiscrimination.

14. For the above said reasons, this petition stands dismissed. Rule is discharged with no order as to costs.

14. The interim relief is granted by this Court (Coram: R.A. Mehta & R.K.Abichandani, JJ) in Civil Application No. 2077 of 1989 vide order dated 9th February, 1993 to the effect that the petitioner shall deposit 50% of the disputed amount of electricity duty with the respondent No.1 and give a bank guarantee for the rest to respondent No.1. In pursuance of this order, the petitioner had already tendered the bank guarantee to respondent No.1. Therefore, respondent No.1, in continuation of the said order dated 9.2.1993, is further directed not to encash the said bank guarantee till 30th November, 2002.

(J.R.Vora, J.)

p.n.nair